IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.148 OF 1992

The State of Maharashtra ...Appellant.

V/s

1. Josef Kustan Amberkar,
age 30 yrs.
2. Piyad Remet Amberkat,
age 36 yrs.
Both Resident of Aaronda,
Taluka: Sawantwadi,
District: Sindhudurg. ...Respondent.

Mr. D.P. Adsule, APP for the appellant.

Mrs. Shakuntala A. Mudbidari for the respondents.

CORAM: V.M.KANADE,J.

DATE: 17th December, 2004

ORAL JUDGMENT:

1. Heard the learned APP appearing on behalf of the State and the learned Counsel appearing on behalf of the respondents.

2. State has preferred this appeal challenging the Judgment and Order passed by the Chief Judicial Magistrate, Sindhudurg at Sawantwadi in Regular Criminal Case No.35 of 1991.

3. Prosecution case is that the accused assaulted the complainant with an iron bar on his leg, as a result

of which the complainant sustained a fracture in the left leg. The Trial Court acquitted the accused. State has, therefore, preferred this appeal.

4. The learned APP has taken me through the Judgment and Order of the Trial Court as also the evidence adduced by the prosecution. It is no doubt true that there are three eye witnesses who have stated that the accused had assaulted the complainant with an iron bar. However, there are other discrepancies regarding the place where the offence was committed. There is, admittedly, a dispute pending between the accused and the complainant and several other cases have been filed by the complainant against the accused. It has also come on record that settlement talks were going on between the parties and the accused had not accepted the terms of compromise which was offered by the complainant. The Investigating Officer also was not in a position to explain as to why the sample of blood soaked earth was not taken. The recovery of the iron bar at the instance of the accused also becomes doubtful in view of the fact that it was recovered from the open place. Thus, it is difficult to accept the prosecution case that the incident in question had taken place at the spot alleged by the prosecution. The doctor who is examined by the prosecution has

admitted that the injury sustained by the complainant was possible as a result of fall from the motor-cycle.

5. In my view, there is no reason to disturb the findings recorded by the Trial Court. The view taken by the Trial Court is a possible view and I do not see any reason to interfere with the said findings recorded by the Trial Court. Appeal is accordingly dismissed.

V.M. KANADE, J.